Filed 9/28/12 In re Kevin S. CA4/3

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re KEVIN S., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. KEVIN S., Defendant and Appellant.	G046133 (Super. Ct. No. DL034464) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Jacki C. Brown, Judge. Affirmed.

Patrick J. Hennessey, Jr., under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Barry Carlton and Karl T. Terp, Deputy Attorneys General, for Plaintiff and Respondent.

The juvenile court declared Kevin S. a ward of the court after finding he aided and abetted Daniel C. and Carlos A. in the commission of felony robbery. The court imposed a five-year maximum confinement term and order Kevin to serve 90 days in juvenile hall. He challenges the sufficiency of the evidence to support the court's finding. We affirm the judgment.

FACTS

On October 6, 2001, David A. walked by Willow Park in Anaheim on his way home from school. He had his iPod and cell phone in his pants pocket. He was wearing earpieces and listening to music on his iPod. He noticed two young men sitting on a bench and one young man standing and facing them. When he walked by them, the young man standing, Daniel, stared at him and indicated that he should stop walking. David took out his earpieces and stopped. Daniel faced him and asked David what he had in his pocket. David answered, "My phone and my iPod." Daniel asked to see the phone and David retrieved his phone from his pocket and flipped it open for him. When he did, he noticed the two young men who had been sitting on the bench, Kevin and Carlos, had come up from behind him and taken positions around him.

Kevin was carrying a lunch pail and put it down. Daniel grabbed the cell phone from David's hand, and then asked to see his iPod. David said no, but Daniel asked him twice more. Daniel, Carlos and Kevin looked at each other and started to laugh. Kevin picked up his lunch pail from the ground, and then he and Carlos started to walk away. Daniel pulled out a knife and held it close to David's throat. Daniel retrieved the iPod from David's pocket and backed away from him. As he backed away, David asked him why he had taken his phone and iPod. Daniel said, "Leave before you get hurt."

David turned and ran away. When he looked back over his shoulder, David first saw Daniel running to join Kevin and Carlos and then the three of them running to the outskirts of the park and across the street. David borrowed the cell phone of a

passerby in an attempt to call his mother. When she did not answer the call, he ran home and called the police.

Within minutes, police officers had detained three suspects approximately two and one-half blocks away from the scene. During an in-field lineup, David identified Daniel and Carlos as two of the three suspects. A search of Daniel yielded a folding knife, which David identified as the knife that was used to take his property. Neither the parties nor the record explain how, when, or why the police investigation focused on Kevin, but David positively identified him as the young man with the lunch pail at trial.

II

DISCUSSION

Kevin contends the evidence is insufficient to sustain the juvenile court's finding he aided and abetted Daniel in the commission of a robbery. Specifically, he points to facts establishing he and Carlos joined Daniel after Daniel stopped David, and that they walked away before Daniel drew his knife. He contends this evidence establishes nothing except his mere presence at the scene of the crime. We are not persuaded.

The Penal Code defines robbery as "the felonious taking of personal property in the possession of another, from his person or immediate presence, and against his will, accomplished by means of force or fear." (Pen. Code §211.) To "'aid[ ]' means 'to *assist*; to *supplement* the efforts of another,' while . . . 'abet' means merely to incite or encourage. [Citations.]" (*People v. Elliott* (1993) 14 Cal.App.4th 1633, 1641, fn. omitted.) Because there is rarely any direct evidence of a criminal defendant's knowledge or intent, these elements are generally proved with circumstantial evidence. (*People v. Hill* (1998) 17 Cal.4th 800, 851-852 (*Hill*); *People v. Croy* (1985) 41 Cal.3d 1, 11-12 & fn. 5.) And while mere presence at a crime scene or failure to prevent a crime is not sufficient to prove guilt, such factors may be considered with other evidence in passing on guilt or innocence. (*People v. Durham* (1969) 70 Cal.2d 171, 181.) Other

appropriate factors to consider are the defendant's failure to affirmatively stop the commission of the crime and the defendant's companionship and conduct before and after the crime. (*People v. Pitts* (1990) 223 Cal.App.3d 606, 893; see also *People v. Haynes* (1998) 61 Cal.App.4th 1282, 1294; *People v. Moore* (1953) 120 Cal.App.2d 303, 306.) "In addition, flight is one of the factors which is relevant in determining consciousness of guilt. [Citation.]" (*In re Lynette G.* (1976) 54 Cal.App.3d 1087, 1094-1095, overruled on other grounds in *Price v. Superior Court* (2001) 25 Cal.4th 1046, 1069, fn. 13.)

In this case, David positively identified Kevin in court, and he identified Daniel and Carlos soon after the incident. David said he had seen these three people talking to each other as he walked through the park. As David walked by them, Daniel stared at him. When Daniel stopped David, Kevin and Carlos soon joined him and the three of them surrounded David. David cooperatively showed Daniel his phone, which Daniel promptly took from his hands. Daniel then asked for David's iPod, and his refusal to turn it over engendered looks and laughs from all three. After this communication, Kevin and Carlos started to walk away, but they did not get far before Daniel pulled a knife and retrieved David's iPod from his pants pocket. After grabbing the iPod, Daniel ran to catch up with Kevin and Carlos and together the three fled across a street and out of David's sight. The entire episode took mere minutes. Thus, it is Kevin's conduct before, during, and after the robbery that proves his intent to facilitate and encourage Daniel's commission of the robbery, not only his mere presence at the scene of the crime.

The Attorney General's reliance on *Hill*, *supra*, 17 Cal.4th 800, and *In re Lynette G.*, *supra*, 54 Cal.App.3d 1087, is appropriate. In *Hill*, defendant was one of two people seen with the perpetrator of the robbery before the crime. The three approached one victim's car and surrounded it. While defendant accosted the driver of the car, another man grabbed the passenger's purse. Defendant's presence with those who surrounded the victim's car before the crime and the coordinated nature of the crimes led

the California Supreme Court to uphold his conviction for the robbery of the passenger. (*Hill, supra,* 17 Cal.4th at pp. 851-852.)

In *In re Lynette G.*, *supra,* 54 Cal.App.3d 1087, the minor was one of four young women involved in the robbery of a woman's purse. One of the girls accosted the woman and took the purse while the other three stood nearby. The four girls fled the scene together and were apprehended together a short time later. Although the minor was not the girl who accosted the victim, she was found to have aided and abetted the robbery. The appellate court upheld the judgment, concluding her presence at the scene of the crime and subsequent flight from the area was sufficient evidence she had knowledge of the perpetrator's criminal purpose and the intent to assist in that purpose. (*Id.* at p. 1095.)

Ultimately, the sufficiency of the evidence standard of review resolves this case. "When undertaking such review, our opinion that the evidence could reasonably be reconciled with a finding of innocence" does not warrant a reversal of the judgment. (*Hill, supra,* 17 Cal.4th at pp. 848-849.) If the verdict is supported by substantial evidence, we are bound to give due deference to the trier of fact and not retry the case ourselves. (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206.) In other words, even if we believed a different outcome was possible under the facts presented, we are not at liberty to substitute our view of the evidence for the juvenile court's determination of the issue.

DISPOSITION

The judgment is affirmed.

O'LEARY, P. J.

WE CONCUR:

RYLAARSDAM, J.

FYBEL, J.